



REPLY TO
ATTENTION OF

AFLG-PR

DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GEORGIA 30330-1062

8 Sep 99

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Contracting Information Letter (CIL) 99-42, Federal Market Survey for Commercial Activities Source Selection Evaluation Board Staffing

1. This CIL provides guidelines governing personal services contracts, advisory and assistance services and inherently governmental functions as related to contracting for Source Selection Evaluation Board (SSEB) support. The results from a federal market survey conducted to determine the availability of federal resources capable of providing SSEB evaluation support is also provided and addressed herein. Finally, the CIL provides information regarding the Army Atlanta Contracting Center (AACC) Blanket Purchasing Agreement (BPA) that will be available for placing orders against the General Services Administration (GSA) contract for Management, Organizational and Business Improvement Services (MOBIS).
2. When contracting for services, it is policy that: (a) services are to be obtained and used in ways that ensure the government retains inherently governmental decision-making authority; (b) services are to be obtained in the most cost-effective manner and are free of any potential conflicts of interest; and (c) sufficient trained and experienced agency personnel are available to manage and oversee the contract administration functions. While effective management oversight is required for all types of service contracts, those services that affect government decision-making are more susceptible to abuse and require a greater level of scrutiny.
3. The following are some factors to consider when contracting for these type services:
 - a. Personal Service Contract. A personal service contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel and subjects contractor personnel to direct supervision and control of a government employee. The government is generally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service

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laws. To obtain personal services by contract rather than by direct hire circumvents civil service laws unless congress has specifically authorized acquisition of the services by contract. There is no statutory authority to use a personal service contract to provide technical evaluation of contract proposals.

b. In assessing whether or not a proposed contract is personal in nature consider:

(1) Is the performance onsite?

(2) Are the principal tools/equipment furnished by the government?

(3) Are comparable services performed in the same or similar agencies using civil service personnel?

However, each contract arrangement must be viewed in light of its own facts and circumstances with consideration of the key element being: will the government exercise relatively continuous supervision and control over the contract personnel performing the contract?

c. When using contractors to provide technical evaluation of contract proposals, care should be taken to avoid personal service implications by not creating an employer/employee relationship or the appearance of one. The statement of work must be carefully structured to ensure requirements are clearly defined and performance standards are developed so that contract performance meets contract terms and conditions. In addition, proper oversight and administration of the contract in accordance with the terms and conditions must be maintained. Care should be taken to ensure that the administration of the contract does not require the government to exercise control over the contractor activities so as to convert the contract to a personal service contract.

4. Inherently governmental functions (FAR 7.5). An inherently government function requires either the exercise of discretion in applying government authority or the making of value judgements in making decisions for the government. Inherently governmental functions mandate performance by government employees. The OFPP Policy Letter 92-1, Appendix A, provides a list of functions considered inherently governmental and Appendix B list those functions not considered inherently governmental. "Participating

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as a voting member on any source selection board" is considered to be an inherently governmental function. However, "contractors providing technical evaluation of contract proposals" and "contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board" are not inherently governmental in nature depending on the manner in which the government administers contractor performance or because of the way in which the contractor performs the contract.

5. The use of contractors on source selection evaluation boards is acceptable within certain guidelines: (a) appropriate agency control is preserved by maintaining leadership positions such as SSAC, SSEB and individual committee chairperson positions; (b) agency conducts conflict of interest reviews of contractors selected to evaluate proposals; (c) language is included in the solicitation informing offerors that by submitting a proposal they submit to allowing contractor(s) to review/evaluate their proposals; (d) ensuring that contractors evaluating proposals sign non-disclosure statements.

6. Bottom line is that the agency should proceed with caution and establish safeguards to protect their inherently governmental authority and the rights of industry regarding proprietary data.

7. Advisory and Assistance Services (FAR 37.2). Advisory and assistance services are those services provided under contract by nongovernmental sources to support or improve organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. In rendering the foregoing services, outputs may take the form of information, advice, opinions, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. The acquisition of advisory and assistance services is a legitimate way to improve government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

8. The guidelines of FAR 37.203 state that acquisition of advisory and assistance services is a legitimate way to improve government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to

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help managers achieve maximum effectiveness or economy in their operations but certain restrictions apply. In accordance with FAR 37.203(c) advisory and assistance services shall not be:

a. Used in performing work of a policy, decision-making, or managerial nature, which is the direct responsibility of agency officials;

b. Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

c. Contracted for on a preferential basis to former government employees;

d. Used under any circumstances specifically to aid in influencing or enacting legislation; or

e. Used to obtain professional or technical advice, which is readily available within the agency or another Federal Agency.

9. The restriction that most directly impacts use of contractors in support of SSEB effort is at FAR 37. In accordance with FAR 37.203(d), contractors may not be paid for services to conduct evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless (a) a written determination is made that personnel with adequate training and capabilities to perform the required proposal evaluation are not available within the agency or another agency; (b) the contractor is a Federally-Funded Research and Development Center (FFRDC) or such functions are authorized by law.

10. Federal Acquisition Regulation Subpart 37.2 - Advisory and Assistance Services, prohibits the use of contractors to perform Source Selection Evaluation Board actions unless a determination is made that sufficient trained government personnel are not available to perform the task. A Market Survey of federal agencies was conducted to determine the availability of subject matter experts (SME) to staff Commercial Activity (CA) Source Selection Evaluation Boards (SSEB) within FORSCOM. The survey is at enclosure 1.

11. The survey went to 27 individuals from different agencies within the Federal Government including Navy, Air Force, Department of Energy, General Services Administration, and NASA. The results of responses received indicate that

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most agencies do have the expertise to staff Source Selection boards. However, without exception, the agencies indicated that they can not accept the commitment due to their own commitments and the lengthy amount of time required to participate on a Source Selection Board. All agencies responded that even if they had personnel available for such an undertaking, that FORSCOM would have to fund any TDY expenses and possibly personnel payroll costs.

12. In accordance with FAR 37.204, a determination that personnel necessary to staff Source Selection Evaluation Boards for Commercial Activities Studies are not readily available within the government is at enclosure 2. After making the necessary local assessment of availability of SSEB support sources, Contracting Activities may use the determination at enclosure 2 as part of the basis for contracting for SSEB support.

13. If the determination is made that contracted SSEB support will be required to support certain CA project, installations are encouraged to consider use of the Management, Organizational and Business Improvement Services (MOBIS) Blanket Purchase Agreement (BPA) issued by the Army Atlanta Contracting Center (AACC). Intent of the BPA is to allow FORSCOM and USARC activities the flexibility of choosing their own CA Study contractor to conduct the studies and to provide required SSEB support. The BPA award will be made to multiple contractors whose known experience and capability to provide A-76 services will ensure installations receive services that are both cost efficient and technically sound. For further information contact Charlene Cowman, DSN 367-4188, email: cowmancharlene@forscom.army.mil.

14. For additional information or questions, please contact Steve Hunnicutt, DSN 367-5691, hunnicus@forscom.army.mil.



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2 Encls
as

Federal Market Survey

Subject: Source Selection Evaluation Board (SSEB) Staffing Support for Commercial Activities (CA) Studies on-going in Forces Command (FORSCOM)

Background:

FORSCOM is the Army's largest major command. As the Army component of the Atlantic Command, FORSCOM trains, mobilizes, deploys, and sustains combat forces capable of responding rapidly to crises worldwide. FORSCOM is comprised of 13 Army installations located throughout the continental United States.

FORSCOM is in the process of conducting over 60 separate CA studies in accordance with Army Regulation 5-20, Commercial Activities Program, and the Office of Management and Budget Circular No. A-76 and the Circular No. A-76 Revised Supplemental Handbook, Performance of Commercial Activities. The studies will impact more than 13,000 Full Time Equivalent (FTE) positions across the Command. The CA studies will primarily impact positions in the Directorate of Logistics (DOL) and Directorate of Public Work (DPW) areas. There are also studies for Directorate of Information Management (DOIM), Directorate of Environment and Safety, Directorate of Community Activities (DCA) as well as numerous smaller studies.

Specific Support Requirement:

The purpose of the survey is to identify potential Subject Matter Experts (SMEs) who can serve as SSEB members. SSEB members would be responsible for providing objective analysis of industry proposals submitted in response to various FORSCOM CA solicitations. The SME must have knowledge of current Army practices, regulations and operation of systems and subjects as outlined by the major study areas (DPW, DOL, DCA, etc.)

This survey is being conducted in two phases. The first phase is to identify SMEs in the key competencies and skills areas described in the below attachment. The second phase of the survey will involve only those agencies having identified available personnel with the specified background and skill requirements.

A typical SSEB membership commitment would entail the following:

- Four to six months Temporary Tour of Duty (TDY); 8-10 hour work days with one scheduled two week break in work activities
- Time off for government holidays
- TDY locations may include HQ FORSCOM (Atlanta, GA) or any one of 13 other FORSCOM Army Installations
- Continued duty assignment will be contingent upon demonstrated capability as part of a multi-functional source selection team; SMEs must have strong analytical and writing skills
- Funding associated with TDY, travel, per diem and related expenses would be provided by FORSCOM

FORSCOM projects an on-going need for SSEB support through fiscal year 01.

Survey Questions:

1. I have reviewed the competencies/skill levels (attached) and, based on the best of my knowledge, believe that my agency would have SMEs in the following areas (please indicate by check mark):

- () Directorate of Public Works
- () Directorate of Logistics
- () Directorate of Information Management
- () Directorate of Community Activities
- () None of the above

2. What funding reimbursement would be required for your support?

- () TDY Costs
- () Per Diem
- () Payroll
- () Fee
- () Other (Please Specify) _____

3. Based on the information that has been provided herein, I do not believe my agency would be in a position to support this initiative for the following reason(s):

- () Length of commitment (4-6 months)

- () Required competencies/skill not available
- () Other mission obligations
- () Time period of requested support (through FY 01)

4. I have reviewed the competencies/skill levels and referred this action to: Name _____,
Organization _____, Phone _____, e-mail
address _____ for action.

5. We request that your e-mail response to this survey be provided not later than April 15, 1999. The FORSCOM POC for this action is Steve Hunnicutt, (404) 464-5691, DSN 367-5691, e-mail hunnicus@forscom.army.mil. Feel free to call with your issues or concerns. We appreciate your consideration and support of this critical initiative.

Key Competencies and Skill Areas:
(Attachment as referenced)

Public Works

Working knowledge of:

- ◆ Repairing and maintaining buildings ranging in size from single family homes to large multi-story office complexes.
- ◆ Operating a sanitary landfill and the associated record keeping.
- ◆ Performing grounds maintenance to include grass, flowers, trees and shrubs located in common areas, housing areas, the golf course.
- ◆ Maintaining government provided equipment such as trucks, tractors, generators, fire fighting equipment, lawn mowers, etc.
- ◆ Snow and ice control, removal, and planning.
- ◆ Maintaining surfaced areas such as concrete pads, asphalt roads, gravel/stone roads or a combination of the above. Also includes the maintenance of the shoulders of the roads to control erosion and prevent dangers.
- ◆ Maintaining railroad tracks and railroad right-of-ways.
- ◆ Operating a sewage treatment plant or equivalent. Proficient in mandatory record keeping and laboratory testing of discharged waters.
- ◆ Handling/controlling industrial wastewater treatment and the associated collection system. Proficient in mandatory record keeping and laboratory testing of discharged waters.
- ◆ Operating and maintaining of a base scale central cooling plant and delivery system.

- ◆ Exterior electrical distribution system for a post/camp/small city. Also includes repair of the same.
- ◆ Potable water delivery system and maintenance of the same.
- ◆ Natural gas distribution and regulation system and maintenance of the same.
- ◆ Hazardous materials removal and abatement.
- ◆ Utilizing an existing system of maintenance control to accurately and effectively receive, document, track, and account for repair orders/work orders in all the above categories base wide.

Directorate of Logistics (Post/Base Logistics)

Working knowledge of:

- ◆ Supply support activities that include material management, requisitioning, receipt processing, stock control, local purchases, and Repairable Exchanges (RX).
- ◆ Storage operations to include general stock storage.
- ◆ Troop Service Support to include turn-ins, issues, and storage.
- ◆ Troop Issue Subsistence Activity (TISA) or equivalent that includes requisition, receipt, issue and storage of food items.
- ◆ Central Issue Facility (CIF) and the requisition, receipt, storage, issue of these items.
- ◆ Ammunition Supply Point (ASP) and the requisition, receipt accounting, surveillance, and inspection of said ammunition.
- ◆ Bulk and retail/mobility fuel supply point operations.
- ◆ Materiel maintenance or mechanical maintenance as defined in AR 750-1, AR 5-9, and DA Pam 738-750.

- ◆ Production Planning and Control (PPC) or equivalent as it pertains to Weekly, Monthly, and Yearly reports and analysis of materiel maintenance/mechanical maintenance.
- ◆ Unit-level maintenance and its associated requirements.
- ◆ Direct Support/General Support maintenance and its associated requirements.
- ◆ Packaging and shipping general parts and equipment by ground or air sources.
- ◆ Aviation Maintenance and its associated requirements.
- ◆ Shop Supply Operations as they pertain to a DS/GS maintenance shop.
- ◆ Army Oil Analysis Program (AOAP) and its associated requirements.
- ◆ Non-Destructive Inspection (NDI) and Test Measurement Diagnostic Equipment (TMDE) program. These programs are combined for this purpose.
- ◆ Integrated Sustainment Maintenance (ISM) program and the Specialized Repair Activity (SRA).
- ◆ Transportation Operations as they pertain to the Army or post/camp/station.
- ◆ Movement Operations as they pertain to the Army or post/camp/station.
- ◆ Terminal Operations as they pertain to either rail or ports.

Directorate of Information Management (DOIM):

Working knowledge of:

- ◆ Electronic Mail (E-Mail)
- ◆ Reproduction

- ◆ Audiovisual Information
- ◆ Telecommunications
- ◆ Networks
- ◆ Micro and mini computer systems hardware and software installation, maintenance and administration
- ◆ Sustainment, Administration, Application programming
- ◆ Information systems security
- ◆ Application programming
- ◆ Information systems security
- ◆ Data processing operations
- ◆ Help desk support

Directorate of Community Activities/ Army Community Services (DCA/ACS):

Working knowledge of broad range of functions and activities related to DCA/ACS operations such as:

- ◆ Physical Fitness Centers
- ◆ Library
- ◆ Recreation Centers
- ◆ Logistic Services
- ◆ Veterinarian Clinic
- ◆ Craft Centers
- ◆ Autocraft Center
- ◆ Entertainment Programs
- ◆ Outdoor Recreation

- ◆ Recreation Swimming
- ◆ Child Development
- ◆ Youth Services
- ◆ Marketing
- ◆ Bowling Centers
- ◆ Golf Course Management
- ◆ Snack and other dining facilities

(End of document)

DETERMINATION

In accordance with Federal Acquisition Regulation Subpart 37.2 - Advisory and Assistance Services and due to a ruling by the General Accounting Office that personnel who may be impacted by decisions rendered in the process of conducting a Commercial Activities (CA) study may not serve on Source Selection Evaluation Boards (SSEB), a Market Survey of Federal Agencies was conducted to determine the availability of resources to staff FORSCOM SSEBs. The survey was sent to 27 individuals from different agencies within the Federal Government. The survey went to Army, Navy, Air Force, Department of Energy, General Services Administration and National Air and Space Administration. The results of responses to the survey indicate that most agencies do have the capability to perform the service but can not due to their own workload. Agencies indicated that they could not accept the task due to similar projects within their own organization or do not have sufficient manpower to complete their primary mission and take on additional tasks. Agencies also indicated that if they were able to staff the FORSCOM SSEBs that FORSCOM would have to pay all costs associated with the temporary duty as well as paying payroll costs.

Therefore, in accordance with Federal Acquisition Regulation (FAR) 37.204, I have determined that sufficient trained government personnel are not available to perform Source Selection Evaluation Board (SSEB) actions for Commercial Activities studies within Forces Command. Subordinate organizations requiring contracted support for Source Selection Evaluation Boards may use this determination as the basis for contracting for the support as maybe required to meet SSEB staffing needs.



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